

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK/NEWPORT NEWS DIVISION

CHARLES WESLEY MANN, Administrator  
of the Estate of Elizabeth Frances  
Mann, Deceased,

Plaintiff

v.

H. K. PORTER COMPANY, INC., et al.  
Defendants

IN RE: ALL CASES

C.A. No. 83-477-N

C.P. 77-1

COPY

*The Deposition of  
KENNETH NELSON  
Taken Pursuant to Notice*

**DATE**

November 12, 1985

**TIME**

9:00 a.m.

**LOCATION**

Fort Magruder Inn  
Williamsburg, Virginia

**APPEARANCES**

RICHARD S. GLASSER, Esquire  
Glasser & Glasser  
Norfolk, Virginia

ROBERT R. HATTEN, Esquire  
Patten, Wornom & Watkins  
Newport News, Virginia

Counsel for Plaintiffs

**AUDIO-VISUAL REPORTING SERVICES, INC.**

700 East Main Street, Suite 1602  
Richmond, Virginia 23219  
(804) 644-2877

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1           KENNETH NELSON, recalled as a witness, having been  
2 previously sworn, resumed the stand, was examined and  
3 testified as follows:  
4

5 EXAMINATION BY MR. GLASSER:

6           Q           In generic terms, there is a pile of documents  
7 in front of you, Mr. Nelson, which I would estimate to be  
8 maybe three inches high comprising as your counsel has just  
9 related to me of approximately forty-six documents. You  
10 have had occasion during last night to look at each of these  
11 documents?

12           A           I have.

13           Q           Is it your -- or are you able to identify  
14 each of these documents?

15           A           I am.

16           Q           Are in fact each of these documents reports  
17 that you have prepared during the time period of 1943 while  
18 you were with the -- working on behalf of the Maritime  
19 Commission and the United States Navy?

20           A           Yes. Some of the reports are joint reports  
21 of Mr. Clou.

22           Q           But as to each, you are able to authenticate  
23 them and to identify them?

24           A           I am.

25           Q           It's my understanding that in all but one of

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1 A I do not recall that.

2 MR. HATTEN: All right. Let me mark that  
3 exhibit we referred to as 80 -- Exhibit Number 80.  
4 That is the 1944 safety survey that you indicated did  
5 not relate to industrial hygiene.

6 (Marked by the court reporter as Nelson  
7 Exhibit Number 80.)

8  
9 BY MR. HATTEN:

10 Q All right. Now, Mr. Nelson, do you agree  
11 that any risk of serious disease or death from asbestos should  
12 be avoided if feasible and available means exist to eliminate  
13 or reduce that risk?

14 MR. EDELL: Did he agree with that at the  
15 time he was employed?

16 MR. HATTEN: Does he agree with it now?

17 MR. EDELL: I am going to direct him not to  
18 answer.

19 MR. COHEN: I object.

20

21 BY MR. HATTEN:

22 Q In the 1940's as part of your industrial  
23 hygiene responsibilities did you agree that any risk of  
24 serious disease or death from asbestos exposure should be  
25 avoided if feasible and available means existed to eliminate

22

1 or reduce that risk?

2 MR. COHEN: Objection.

3

4 BY MR. HATTEN:

5 Q Can you answer that question? Would you  
6 agree with that statement?

7 A My responsibility was to report conditions  
8 I observed that in my judgment might pose health hazards to  
9 the people in that situation.

10 Q All right. Is your general response to the  
11 question yes, that you do agree that any risk of death or  
12 serious injury from asbestos exposure should be avoided if  
13 feasible and available means exist to reduce or eliminate the  
14 risk?

15 MR. EDELL: Can I have the question read  
16 back, please, for the witness?

17 (The last question was read by the court  
18 reporter.)

19 MR. EDELL: Was that his opinion when he was  
20 in the Navy?

21 MR. HATTEN: Yes.

22 MR. COHEN: Objection.

23

24 BY MR. HATTEN:

25 Q Okay. Was that your opinion?

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1           A           Certainly if I saw any exposure which involved  
2 potential danger to the worker or workers, I would recommend  
3 the avoidance of such exposures or the protection against them  
4 by use of protective equipment and/or ventilation.

5           Q           All right.    So for any recognized risk, if  
6 there was feasible and available means to eliminate or reduce  
7 the risk, you would try to do so; is that correct?

8           A           Yes.    I would try to do so.

9           Q           All right.    All right.    Now, was it feasible  
10 in the 1940's based upon your observations for warning labels  
11 to have been placed on the packaging of the asbestos products  
12 that the asbestos insulators were using?    Was it feasible?

13          A           I don't know.    Asbestos products on the  
14 insulation?

15          Q           On the boxes.    Was it feasible to put a  
16 warning label on the boxes?

17          A           So far as I know.

18          Q           All right.    And was there means available in  
19 the 1940's when you were in the Navy to either stamp, glue,  
20 or print warning labels on the packaging of asbestos products  
21 that were used in the shipyards?

22          A           That may have been done.    It's possible.

23          Q           All right.    So would I be correct that you  
24 know of no reason why it was either not feasible or not  
25 possible for asbestos manufacturers to put a warning on the

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24

1 cartons of their asbestos products that the product could  
2 possibly be dangerous; is that correct?

3 A It could have been done. It was not done.

4 MR. HATTEN: All right. Thank you. I  
5 think that's all. Thank you.

6 MR. N. SMITH: Is that it?

7 MR. HATTEN: Hope I didn't take much more  
8 than ten minutes.

9 MR. N. SMITH: A little more. If I might  
10 have a moment for a break, I would like to consider  
11 where I would like to go under the circumstances, and  
12 I might be able to save us some time.

13 (The deposition recessed at 9:40 a.m. At  
14 9:55 a.m. the deposition continued as follows:)

15 MR. GLASSER: What I'm going to do, Ron,  
16 starting with Exhibit 32 is simply read a date to you  
17 and put a number in the right-hand corner and ask you  
18 to officially accept it as an exhibit. These are  
19 from the pile that I referred to roughly three inches  
20 high that Mr. Nelson has identified.

21 The one from January 18, 19, 20, 1943, of the  
22 Brave Corporation Shipyard --

23 THE WITNESS: I'm sorry. I think that is  
24 Gravco, isn't it?

25 MR. GLASSER: The witness is right.